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ABSTRACT

Bylaws for independent colleges who wish assistance in writing or revising their own bylaws are presented. The bylaws are designed to provide a basis for discussion on the form of governance an institution may wish to establish. Several provisions may also be useful for tax-supported institutions. Sixteen articles cover the following: powers of trustees, membership of board of trustees, Trustees Emeriti, officers of the college, powers and duties of the chair and vice chair of the board of trustees, powers and duties of the college president, powers and duties of the vice president, powers and duties of the secretary, powers and duties of the treasurer, meetings, action without formal meeting, the functions of 15 committees, indemnification, conflicts of interest, discrimination prohibited, and review and amendment of bylaws. It is recommended that the following points be kept in mind: the bylaws provide the basis upon which the institution is governed and should not be viewed merely as a legal formality; state laws governing colleges and universities, along with other charitable or educational corporations, vary; and the model necessarily involves a number of choices that are somewhat arbitrary. (SW)

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Illustrative Bylaws

for

Independent Colleges

Association of Governing Boards of
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These bylaws were initially developed for the Association of Governing Boards of Universities and Colleges by the Washington, D.C. law firm of Zuckert, Scoutt and Rasenberger, after consultation with attorneys, board members and administrators representing a number of our member institutions. This version reflects the comments and suggestions of attorneys and college administrators who reviewed and recommended improvements to the previously published bylaws. They are designed especially for independent colleges which have requested assistance in writing or revising their own bylaws. They are not designed to be adopted verbatim, but are designed to provide a basis for discussion on the form of governance an institution may wish to establish. Furthermore, although what follows is not designed to be used by public colleges or universities because state laws vary widely, several provisions could be useful for tax-supported institutions as well.

In using these bylaws several points should be kept in mind:

First, the bylaws of any institution of higher learning provide the basis upon which that institution is governed and should not be viewed merely as a legal formality. Therefore, the adoption or amendment of bylaws demands serious attention to insure that the provisions are clearly written and, more important, are appropriate to the particular institution.

Second, state laws governing colleges and universities, along with other charitable or educational corporations, vary. While an attempt has been made, in this model, to conform to the requirements that states generally place upon institutions of higher learning, no attempt to include the various nuances of every state has been made. Therefore, before the suggestions in the model or any other bylaws are adopted, an attorney should be consulted to insure compliance with local law.

Third, since many options are available to a college or university for determining how its governing board is organized, any model necessarily involves a number of somewhat arbitrary choices. Comments received from attorneys, trustees, and chief executives on drafts of the model underscored the possible divergence of approaches. There was general agreement that bylaws should be kept as simple as possible, to allow for flexibility and to avoid the need for frequent amendment. (Need for additional specificity or clarification could be covered in a board "policy manual" or separate board document.)

Finally, the term "chair" is used throughout. Another option is, of course, "chairperson." Although views differ among men and women

concerning the "sexist language," there has been a trend away from the use of "chairman," especially as increasing numbers of women assume trusteeships (and presidencies).

Several provisions of the model stand out as being particularly appropriate for attention:

1) Article II, Section 2.

The model provides that the members of the board of trustees shall all be elected by the incumbent trustees. Some universities and colleges take a different approach and provide for classes of trustees and election by class, e.g. three alumni trustees nominated by the alumni.

2) Article II, Section 6.

The minimum (age 18) or maximum (age 70) age limits placed on trustees may be found inappropriate and may be altered or eliminated.

3) Article IV and VII.

To avoid the sometimes cumbersome distinction between "officers of the board" and "officers of the college," it is suggested that the bylaws refer only to the "officers of the college." These would include the Chair, Vice Chair, Secretary and Treasurer of the Board of Trustees, the President (ex officio board member, without power to vote), and one or more Vice Presidents. Some institutions may prefer a bifurcated approach, however.

The model does not specify the number of vice presidents or their particular duties. This approach gives the board flexibility in creating new offices or duties as the need arises without requiring amendment of the bylaws. Some institutions may prefer to specify duties assigned to particular vice presidents, e.g. vice president for academic affairs, vice president for public relations and development, etc. in their bylaws.

4) Article XII.

The bylaws provide for ten standing committees charged with specific duties. Committees may be consolidated or changed for better definition of role, e.g. from the Committee on Membership to the Committee on Nominations.

5) Article XII, Section 6.

The model provides that the Executive Committee shall consist of the Chair, Vice Chair, Secretary, Treasurer and

the Chair of each standing committee. A board may wish to elect additional members from "at-large" or include the Chair of specified committees.

6) Article XIV.

ACB has developed a model policy concerning trustee conflict of interest and financial disclosure, which is available to the membership for a nominal charge. It is good practice to include such a provision in the Bylaws, and to also have a separate and more detailed policy statement adopted by resolution of the board. The latter might include a formal financial disclosure procedure to be conducted annually.

7) Article XV, Section 1.

Certain special types of colleges and universities, e.g. single sex or sectarian institutions, may wish to modify this provision. However, legal counsel should be consulted before changes are made.

Additional modifications may be made, of course, in a number of other provisions. The Association of Governing Boards is eager to receive comments on this model. We are particularly interested to know how recently constituted bylaws (based on this model) served the institution, and what problems were encountered in implementing the suggested provisions.

Attachment

Revised: August, 1981

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(Name of College)

BYLAWS

Adopted by the Board of Trustees

(Insert date of adoption and
most recent amendment date)

ARTICLE I

Powers of Trustees

The Board of Trustees shall have and exercise the corporate powers prescribed by law. Its primary functions shall be policy making and responsibility for sound resource management of the corporation (referred to in this and the following articles as "College"). The Board of Trustees shall further determine the general, educational and financial policies, and shall have the power to carry out any other functions which are permitted by these bylaws or by the articles of incorporation, except as limited by law. These powers shall include but shall not be limited to the following:

1. Determine and periodically review the purposes and the mission of the College.
2. Establish, review and approve changes in the educational programs of the College, consistent with its mission.
3. Establish procedures regarding appointment, promotion, tenure and dismissal of faculty members.
4. Approve annually the terms and conditions of employment, salary policies and schedules for all staff, faculty, administrators and other employees of the College.

5. Appoint the President, who shall be the Chief Executive Officer of the College, and any other officers of the Board and administrative officers of the College, in accordance with these bylaws, and remove them for just cause.

6. Approve and authorize all earned and honorary degrees upon recommendations of the faculty.

7. Oversee and approve the budget of the College, and establish policy guidelines for the endowment and for all investments and major fund raising efforts.

8. Authorize the purchase, management and sale of all land, buildings or major equipment for use of the College.

9. Authorize the construction of new buildings and major renovations of existing buildings.

10. Authorize the incurring of debts by the College and securing thereof by mortgage and pledge of real and personal property tangible and intangible.

11. Authorize any changes in tuition and fees within the College.

12. Authorize officers or agents of the College to accept gifts or bequests on behalf of the College.

ARTICLE II

Membership of Board of Trustees

Section 1. The Board of Trustees shall consist of not less than twenty-one (21), nor more than thirty-five (35) persons.

Section 2. New members of the Board of Trustees shall be elected by a majority of the Trustees then in office at each annual meeting of the Board.

Section 3. Trustees shall serve for three-year terms and until their successors are elected and qualified and may succeed themselves in office. However, trustees who have served for three consecutive terms (including any partial term), shall not be eligible for reelection until one year has elapsed after the end of their third term.

Section 4. Any member of the Board of Trustees may be removed from office, for cause, at any meeting of the Board by affirmative vote of two-thirds of the Trustees then in office.

Section 5. Any vacancy on the Board of Trustees may be filled by the remaining Trustees, through a special election at any regular meeting of the Board.

Section 6. No person shall be eligible for election prior to attaining the age of eighteen (18) years, nor shall any Trustee be elected to serve a term commencing after attaining the age of seventy (70) years.

ARTICLE III

Trustees Emeriti

A Trustee who has served for a minimum of three terms or has served for a minimum of two terms and attained the age of seventy years may, upon recommendation of the Membership Committee, be elected by a majority of the Board as a Trustee Emeritus. This position shall be reserved for those Trustees with records of distinctive service. Trustees Emeriti shall be elected for three-year terms and may be reelected without limit. They shall be entitled to receive notices of all meetings of the Board, to attend and speak at all such meetings, to receive minutes of all meetings of the Board and Executive Committee, and to be members

of all committees except the Executive Committee. They shall have the power to vote in meetings of any committee on which they may serve, but shall not have voting powers in meetings of the Board of Trustees. A Trustee Emeritus shall not be counted as a member of the Board of Trustees for any purpose.

ARTICLE IV

Officers of the College

Section 1. The officers of the College shall be the Chair, Vice Chair, Secretary and Treasurer of the Board of Trustees, the President and one or more Vice Presidents. The Chair and Vice Chair shall serve for terms of two years and until their successors are elected and qualified The President, Secretary and Treasurer shall serve such terms as may be determined by the Board of Trustees at the time of their appointment or election. Unless a vacancy occurs at another time, elections of the Chair, Vice Chair, Secretary and Treasurer shall be held at the annual meetings of the Board. A vacancy in any office may be filled at any time. The one or more Vice Presidents shall be appointed by the President with the approval of the Board of Trustees.

Section 2. The Chair, Vice Chair, Secretary and Treasurer shall be members of the Board of Trustees. The President shall be ex officio a member of the Board without power to vote and shall not be counted as a member of the Board or any committee for the purposes of determining a quorum. The other officers of the College shall not be members of the Board of Trustees.

Section 3. The Board may approve the appointment of other officers (such as an Assistant Treasurer or an Assistant Secretary) upon recom-

mendation of the President as it deems necessary. Such officers shall hold office at the discretion of the Board of Trustees and shall be subject to removal by affirmative vote of a majority of the entire membership of the Board of Trustees.

Section 4. In the event of a vacancy in the office of the President, the Board shall appoint a special Presidential Search Committee to submit nominations for candidates to the Office in line with standing board policy which is separate from these bylaws. (NOTE: It is suggested that all boards maintain and periodically review the adequacy of established policy and procedures with regard to a presidential search process.)

ARTICLE V

Powers and Duties of the Chair and Vice Chair of the Board of Trustees

The Chair shall preside at all meetings of the Board of Trustees, shall have a right to vote on all questions, shall appoint to all committees the members who are not appointed by the Board of Trustees, and shall have such other powers and duties as the Board from time to time may prescribe. In the absence of the Chair, the Vice Chair shall perform the duties of the office of the Chair and have such other powers and duties as the Board may from time to time prescribe.

ARTICLE VI

Powers and Duties of the President of the College

The President of the College shall be the Chief Executive Officer of the College and the official adviser to and executive agent of the

Board of Trustees and its Executive Committee. The President shall, as educational and administrative head of the College, exercise a general superintendence over all the affairs of the institution, and bring such matters to the attention of the Board as are appropriate to keep the Board fully informed in meeting its policy-making responsibilities. Furthermore, the President shall have power, on behalf of the Trustees, to perform all acts and execute all documents to make effective the actions of the Board or its Executive Committee, and except as otherwise provided in these bylaws, shall be ex officio a member of all committees of the Board without power to vote.

ARTICLE VII

Powers and Duties of the Vice President(s)

Each Vice President shall have such powers and shall perform such duties as may be assigned by the President with approval of the Board of Trustees. In case of the absence or disability of the President, the duties of that office shall be performed by any Vice President designated by the Board of Trustees, or in the absence of any such designation, by the most senior Vice President available, which, in the absence of other criteria established by the Board, shall be the Vice President with the greatest length of service to the College.

ARTICLE VIII

Powers and Duties of the Secretary

The Secretary shall have custody of the seal of the College and shall attest to and affix said seal to such documents as requi ed in

the business of the College, including but not limited to deeds, bonds, mortgages, agreements, contracts, diplomas, evidences of the award of degrees, transcripts, abstracts of resolutions, certificates, minutes, and bylaws issued pursuant to the authority of the College. The Secretary shall give proper notice of all meetings of the Board of Trustees and shall keep a record of the appointment of all committees of the Board of Trustees. Furthermore, the Secretary shall keep or cause to be kept a record of the minutes of all meetings of the Board of Trustees and each of its committees. Any of the duties or powers of the Secretary may be performed by an Assistant Secretary who shall be responsible to and report to the Secretary.

ARTICLE IX

Powers and Duties of the Treasurer

The Treasurer shall be responsible for carrying out the mandates of the Board of Trustees and its Finance Committee in overseeing the financial resources of the college including, but not limited to, cash, securities, stocks, bonds and all other property, personal or real, owned by the College. The Treasurer shall assure that all books and accounts are accurately kept and furthermore, shall present a full and detailed financial statement properly audited by an independent certified accountant, to the board at its annual meeting and, if requested, at any other meeting of the Board of Trustees or any meeting of its Finance or Executive Committees.

The Treasurer shall monitor the investments of the College, including all funds and endowments, as recommended by the Investment Committee,

and approved by the Board of Trustees. In addition, the Treasurer may be required to furnish a bond for the faithful performance and discharge of these duties, as may be directed by the board or required by state statute. The Treasurer shall be ex officio a member of the Finance Committee and of the Investment Committee.

ARTICLE X

Meetings

Section 1. There shall be four regular meetings of the Board of Trustees annually, which shall be held in the winter, spring, summer and fall on such date and place as may be designated either by the Board, any two of the Chairs, the President or the Secretary. The annual meeting of the Board shall be the ____ meeting each year.

Section 2. Special meetings may be held at the call of any two of the Chair, the President and the Secretary; and it shall be the duty of the Chair or the Secretary to call such special meetings on the request of five Trustees, setting forth the objects of the meeting.

Section 3. Written notice of all meetings of the Board of Trustees shall be sent by the Secretary to each Trustee at least ten days before the date of the meeting. In the case of special meetings, the notice shall state the purposes of the meeting, and no business shall be transacted at such meeting that does not relate to the purposes stated.

Section 4. Whenever notice is required to be given under the provisions of statutes or of the articles of incorporation or of these bylaws, a waiver in writing signed by the persons entitled to said notice, whether before or after the time stated therein shall be deemed equivalent

thereto. Attendance at any meeting by a Trustee shall be conclusively deemed a waiver of notice of that meeting unless objection is made at the outset of such meeting to the failure to give proper notice.

Section 5. A majority of the Trustees shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the Trustees present and voting at a duly called meeting of the Board or any committee shall be the act of the Board of Trustees or that committee, except as may be provided by statute or by the articles of incorporation, or by these bylaws.

ARTICLE XI

Action Without Formal Meeting

Any action required or permitted to be taken by the Board of Trustees or by any committee thereof may be taken without a formal meeting. Meetings may be conducted by mail, telegram, cable, or in any other way the Trustees shall decide. However, a written consent setting forth the action so taken and signed by all members of the Board or of a committee, as the case may be, must be filed with the minutes of the proceedings of the Board or the Committee.

ARTICLE XII

Committees

Section 1. There may be such special or ad hoc committees as the Board of Trustees may from time to time establish for the discharge of particular duties.

Section 2. There shall be the standing committees specified in this Article. Members of standing committees shall be appointed by the Chair, after consultation with the Board, annually, at or following the annual meeting of the Board of Trustees. Except as provided in these bylaws, the Chair of the Board and the President of the College shall be ex officio members of all standing committees, and each standing committee shall include at least three additional Trustees. Except where otherwise provided in this Article, additional members, including persons who are not on the Board of Trustees, may be appointed. The Chair of each standing committee and a majority of its members shall be Trustees.

Section 3. The Board of Trustees may at any time discontinue any of its standing committees for such time as may be determined, and the duties of any committee so discontinued shall be performed during such discontinuance by the Executive Committee.

Section 4. The Chair of any committee, with the consent of the Chair of the Board, may request the President of the College to appoint an Officer of the College or a member of the administrative staff to serve as a liaison between the committee and the office of the President, and the President shall designate such a person to perform that service. Such liaison person shall assist the committee in the carrying out of its duties.

Section 5. Except as otherwise provided in this Article, all standing committees shall meet at least two times annually.

Section 6. Executive Committee

a. The Executive Committee shall have a minimum of ____ members, all of whom shall be Trustees. The Chair of the Board of Trustees shall

be the Chair of the Executive Committee. The Vice Chair of the Board, the Secretary, the Treasurer and the Chair of each standing committee of the Board shall be members of the Executive Committee. The President shall be ex officio a member of the Executive Committee, without power to vote, and shall not be counted as a member of that committee for the purpose of determining a quorum.

b. Between meetings of the Board of Trustees, the Executive Committee shall have general supervision of the administration and property of the College except that, unless specifically empowered by the Board of Trustees to do so, it may not take any action inconsistent with a prior act of the Board of Trustees, award degrees, alter bylaws, locate permanent buildings on tax-exempt property held for College purposes, remove or appoint the President of the College, or take any action which has been reserved for the Board.

c. The Executive Committee shall meet regularly at least __ times a year in the months of ____, ____, ____, and ____. Special meetings shall be called by the Secretary on the written request of the Chair or at least three of the members.

d. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business.

e. Minutes of the meetings of the Executive Committee shall be taken and shall be distributed promptly to each member of the Board following each Executive Committee meeting.

Section 7. Committee on Membership. The Committee on Membership shall have a minimum of ____ members. It shall present to the Board of Trustees nominations for Trustees to be elected by the Board, and

for Chair, Vice Chair, Secretary and Treasurer. The Committee shall furnish information relating to the background and qualifications of all such nominees at least two weeks prior to the Board meeting at which an election or appointment is scheduled to take place. The Committee shall develop and administer a program of orientation for newly elected Trustees. The Committee shall also, subject to the requirements as set forth in these bylaws, nominate Trustees Emeriti. It shall report to the Board of Trustees at the annual meeting and otherwise as circumstances dictate.

Section 8. Educational Affairs Committee. The Educational Affairs Committee shall have a minimum of ____ members. It shall, in cooperation with the President, study and appraise the quality of the academic program, measure the program relative to other comparable institutions in terms of teaching load, class size, student-faculty ratios, instructional expenditures, research and other relevant factors; formulate desirable short and long range enrollment goals; advise the Finance Committee on the specifications and requirements for financing the academic programs; and make such reports and recommendations to the Board of Trustees relative to the foregoing as may be required.

Section 9. Faculty Affairs Committee. The Faculty Affairs Committee shall have a minimum of ____ members. It shall review matters affecting the faculty of the College, other than those affecting the academic program, including salary, pension, and other personnel policies. It shall also consider proposals on such matters and report and make recommendations thereon to the Board of Trustees as may be required.

Section 10. Student Affairs Committee. The Student Affairs Committee shall have a minimum of ____ members. It shall review matters affecting all aspects of student life of the College, other than those relating to the academic program, including admissions, residential policies, and counseling. It shall also consider proposals on such matters, and report and make recommendations thereon to the Board of Trustees as may be required.

Section 11. Finance Committee. The Finance Committee shall have a minimum of ____ members. It shall review annual operating and capital budgets prepared and presented under the direction of the President and make recommendations with respect to the Board of Trustees. It shall review major financial transactions not provided for in the budget and submit proposed variances with recommendations to the Board of Trustees or Executive Committee. The chief financial officer of the College shall be an ex officio member of the Finance Committee, without power to vote and shall not be counted as a member of the Committee for any purpose.

Section 12. Audit Committee. The Audit Committee shall have a minimum of ____ members. It shall periodically appraise the financial control and accounting systems of the College and recommend any changes it deems appropriate. It shall recommend the designation of an independent auditor each year and shall cause to be prepared and submitted to the Board of Trustees at least once a year an audited statement of the financial condition of the College as of the close of the fiscal year and of the receipts and expenditures for each year. The Committee may request any designated independent auditor, or any officer or employee

of the College, to appear before it to report on the financial condition of the College and answer any questions the Committee might have. The President of the College shall not be an ex officio member of the Audit Committee, but may, upon invitation of the Committee, attend any meeting.

Section 13. Development Committee. The Development Committee shall have a minimum of ____ members. It shall review and recommend fund raising and public relations programs which are necessary to enable the College to carry out its purpose. It shall regularly report on its activities to the Board of Trustees.

Section 14. Investment Committee. The Investment Committee shall have a minimum of ____ members. Acting within the scope of investment policy guidelines established by the Board of Trustees, the Committee shall have charge of the investment of all funds of the College, including the power to effect purchases, sales or exchanges of securities and other investment assets of the College. The Committee may employ investment counsel and may delegate authority to purchase or sell securities for the account of the College to such investment counsel or to any Officer of the College subject to such limitations as the Committee may impose. The Committee shall report changes in investments to the Board of Trustees at each Board meeting. It shall from time to time prepare and submit to the Finance Committee estimates of expected endowment income.

Section 15. Building and Grounds Committee. The Building and Grounds Committee shall have a minimum of ____ members. It shall review and analyze maintenance and operations policy, recommend improvements, review and recommend approval of plans and cost estimates for new facilities, review the annual operating and capital budgets of the Department

of Building and Grounds, and make recommendations to the Finance Committee. It shall report on its activities at the annual meeting of the Board of Trustees and at such other times as it may be requested to do so by the Board of Trustees or otherwise as circumstances dictate.

ARTICLE XIII

Indemnification

Each Trustee and Officer of the College shall be indemnified against all expenses actually and necessarily incurred by such Trustee or Officer in connection with the defense of any action, suit, or proceeding to which he or she has been made a party by reason of being or having been such Trustee or Officer except in relation to matters as to which such Trustee or Officer shall be adjudicated in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty.

ARTICLE XIV

Conflicts of Interest

A Trustee shall be considered to have a conflict of interest if (a) such Trustee has existing or potential financial or other interests which impair or might reasonably appear to impair such member's independent, unbiased judgment in the discharge of his or her responsibilities to the College, or (b) such Trustee is aware that a member of his or her family (which for purposes of this paragraph shall be a spouse, parents, siblings, children and any other relative if the latter reside in the same household as the Trustee), or any organization

in which such Trustee (or member of his or her family) is an officer, director, employee, member, partner, trustee, or controlling stockholder, has such existing or potential financial or other interests. All Trustees shall disclose to the Board any possible conflict of interest at the earliest practicable time. No Trustee shall vote on any matter, under consideration at a Board or committee meeting, in which such Trustee has a conflict or interest. The minutes of such meeting shall reflect that a disclosure was made and that the Trustee having a conflict of interest abstained from voting. Any Trustee who is uncertain whether a conflict of interest may exist in any matter may request the Board or committee to resolve the questions by majority vote.

ARTICLE XV

Discrimination Prohibited

Section 1. In administering its affairs, the College shall not discriminate against any person on the basis of race, creed, color, national or ethnic origin, sex, age or physical disability.

ARTICLE XVI

Review and Amendment of Bylaws

Section 1. These bylaws may be changed or amended at any meeting of the Trustees by a two-thirds vote of those present, provided notice of the substance of the proposed amendment is sent to all the Trustees at least ten days before the meeting.

Section 2. Prior to each annual meeting of the Board of Trustees, the Executive Committee shall review these bylaws and suggest any necessary changes thereto.